

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218428.2

DATE: July 29, 1985

MATTER OF:

Siska Construction Company, Inc.--
Reconsideration

DIGEST:

GAO will not reverse or modify a prior decision where the protester fails to provide in its request for reconsideration new evidence or legal arguments which show that the decision was erroneous. Protester has essentially reiterated arguments fully considered in the prior decision.

Siska Construction Company, Inc. (Siska), requests that we reconsider our decision in Siska Construction Company, Inc., B-218428, June 11, 1985, 85-1 C.P.D. ¶ ___, in which we held that Siska's low bid under invitation for bids No. F27604-85-B0007 for renovation and improvements at Pease Air Force Base, New Hampshire, was nonresponsive where the corporate surety on the required bid bond was not listed as an acceptable surety in Treasury Department Circular 570. ^{1/} In addition, we rejected Siska's contention that the bids submitted by the second low bidder, Middlesex Contractors & Riggers Inc. (Middlesex), and by the other bidders were nonresponsive because the bid bonds lacked the required corporate seals. Lastly, we declined to consider Siska's objection to the power of attorney forms executed by other bidders' sureties, noting that even if Siska's allegation was factually correct the protester had not explained how the alleged defect would affect the validity of the bid bonds.

In its request for reconsideration, Siska has reiterated some of the arguments which it presented in its original protest. Siska argues that its bid bond should not have been rejected since the solicitation neither advised potential bidders of the requirements for an acceptable surety nor incorporated by reference those requirements. Siska also argues that the omission in the solicitation of a requirement for an acceptable surety

^{1/} Circular 570 is entitled "Companies Holding Certificates of Authorities as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

032695

distinguishes the procurement in question from prior cases cited in our June 11 decision in which our Office held that a bid was nonresponsive for failure to furnish a surety listed in Treasury Department Circular 570. See Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 C.P.D. ¶ 36, and S.T.C. Construction Corp., B-194980, July 21, 1979, 79-2 C.P.D. ¶ 60.

We do not agree with Siska that it was relieved from the responsibility to furnish a listed surety. As we set forth in our June 11 decision, Siska was on notice of the requirement to furnish an approved surety with its bid bond since it furnished the bid bond on standard form (SF) 24, the specified government bid bond form for domestic procurements, which specifically advises that "corporations executing the bid bond as sureties must be among those appearing on the Treasury Department's list of approved sureties." In the above cited decisions, standard forms included with the solicitation only stated the need for a "good and sufficient surety" and for a bid bond "in proper form and amount" and did not set forth the specific requirement that the surety appear in the Treasury Department's list of approved sureties.

Siska also cites the "ambiguity" in the solicitation concerning an acceptable surety in its renewed request that it be allowed to correct its bid bond. As stated above, the SF-24 on which Siska furnished its bid bond provided specific instructions as to the requirement for approved corporate sureties. As stated in our June 11 decision, the failure to provide an acceptable surety may not be corrected as a minor irregularity. See General Communications & Electronics, Inc., B-197471, Aug. 12, 1980, 80-2 C.P.D. ¶ 108.

Siska again reiterates its argument that its bid guarantee should have been accepted by the agency since the same surety was accepted by the government in prior procurements. We stated in our June 11 decision that the fact that government agencies may have previously overlooked a bid bond with an unacceptable surety does not provide a basis for accepting the same deficiency in a subsequent procurement. See Ron Groves Heating Air Conditioning, and Piping, Inc., B-198687, May 23, 1980, 80-1 C.P.D. ¶ 360. Siska now asserts that the agency's prior acceptance of the unlisted surety was "knowing" and "deliberate." It is immaterial whether an agency's prior acceptance of a surety who is not listed in the Treasury Department's circular of

approved sureties was inadvertent or deliberate since such prior acceptance does not provide a proper basis for accepting the same bid bond deficiency in a future procurement.

Siska also accuses us of "discriminatory action" since we upheld the agency's determination that Siska's bid was nonresponsive because of the deficiency in its bid bond guarantee yet rejected Siska's arguments that the bids submitted by Middlesex and the other bidders were nonresponsive due to a failure to affix corporate seals on the bid bonds. Our decision with regard to the bid bonds submitted by the other bidders was based on our decisions which have held that failure to furnish corporate seals on a bid bond does not render the bid nonresponsive since such seals may be furnished after bid opening. See Securities Exchange Commission, B-184120, July 2, 1975, 75-2 C.P.D. ¶ 9, and B-164453, July 16, 1968. Unlike the furnishing of an acceptable bid bond surety, the lack of corporate seals on a bid bond does not affect the adequacy of the bid guarantee.

Siska has also objected to our refusal to consider its objections to the power of attorney forms executed in connection with the other bidders' bid bonds. We noted, with regard to this issue, that Siska had not explained "the factual basis for this contention or how, if true, it would affect the validity of the bid bonds." In its request for reconsideration, Siska has not presented any facts or arguments which would show that our disposition of this issue was improper.

Our Office will not reverse or modify a prior decision where, as here, the protester has failed to provide new evidence or legal arguments that the decision was erroneous. Amarillo Aircraft Sales & Services, Inc.--Request for Reconsideration, B-214225.2, Nov. 28, 1984, 84-2 C.P.D. ¶ 582. Accordingly, we affirm our prior decision.

In its request for reconsideration, Siska now raises its concern about the small business size status of certain unnamed bidders and the accuracy of their "representations" and "certifications." Siska advises that it is unable to make specific allegations because of "legal consequences." Our Office does not consider size status protests since the Small Business Administration has conclusive authority to determine the matter of small business size protests for

01810

federal procurement purposes. Hart Precision Products, Inc., B-216059, Aug. 22, 1984, 84-2 C.P.D. ¶ 219. Furthermore, Siska's general allegations about unspecified improprieties by unnamed bidders on certifications and representations which have not been identified do not set forth a basis for protest in sufficient detail to warrant our consideration.

Lastly, Siska has requested an opportunity for a "hearing" in this matter. Our Office does not conduct evidentiary hearings on bid protests. See Krygoski Construction Co., B-213035.2, May 15, 1984, 84-1 C.P.D. ¶ 523. However, our Office does hold bid protest conferences after timely receipt of such a request by the protester, interested parties, or the agency. See 4 C.F.R. § 21.5 (1985). However, we will not conduct a conference on a reconsideration request unless the matter cannot otherwise be resolved expeditiously. Global Associates--Reconsideration, B-212820.2, Aug. 21, 1984, 84-2 C.P.D. ¶ 203. We do not believe that a conference is warranted on this matter.


Harry R. Van Cleve
General Counsel